retraction that there was no intention to give false evidence. I do not consider that the appellant in this case retracted his previous statement; he simply made an evasive statement relying on his alleged lack of memory, and in the circumstances the presumption that he made the incorrect statement in good faith cannot be raised in his favour.

For the above reasons, I dismiss the appeal. With regard to the sentence, I do not consider that the sentence of 18 months rigorous imprisonment by the learned President is excessive; the maximum punishment for this offence is seven years.

Appeal dismissed.

SEOW SENG CHOON
v.
YAM KIM CHYE & ANOR.

[Court of Appeal (Sir Charles Murray-Aynsley, C.J. (Singapore), Mathew, C.J. (F.M.) and Brown, J.) November 11, 1952]

[Singapore — Civil Appeal No. 17 of 1952]

Damages — Loss of expectation of life — Pain and suffering.

This appeal raises the question whether or not the damages of $4,000 awarded for loss of expectation of life and of $2,000 for pain and suffering were excessive. The deceased was killed in an accident and suffered pain for nearly 3 days before his death.

Held: (1) The directions laid down in **Benham** v. **Gambling**[1] have resulted in the awarding of modest but arbitrary sums for loss of expectation of life. There is no logical reason why one sum should be awarded more than another, and it is impossible to say logically that any figure is wrong. But the awarding of large sums was found to have practical inconveniences. In this case, having in mind the fall of the value of money since that case, the sum awarded is not manifestly excessive; (2) it is wrong to treat damages for pain and suffering as analogous to that for loss of expectation of life. The sum awarded for the former should be the same as would have been awarded if the deceased had recovered. Here the deceased suffered a substantial amount of pain and suffering.

Per Brown, J. (dissenting): the onus is on the claimant to prove pain and suffering.

Cases referred to:—

(1) *Benham v. Gambling* (1941) 1 All E.R. 7.

(2) *Rose v. Ford* (1937) 3 All E.R. 359.

(3) *Mills v. Stanway Coaches* (1940) 2 All E.R. 586.

COURT OF APPEAL, appeal from the decision of Knight, J., reported, *ante*, at p. 168.

L. A. J. Smith for the appellant.

Chong Thutt Pitt for the respondents.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J. : — This was an appeal by the defendant concerning damages only, which arose out of an accident in which the deceased was killed. The damages awarded come under three heads. Under special damages there is a sum awarded for costs of Letters of Administration. This item seems to have been uncontested in the Court below and we do not think we ought to interfere. Otherwise there was a sum of $4,000 awarded for lose of expectation of life. This is a matter which it is impossible to assess satisfactorily. The House of Lords in *Benham v. Gambling*[1], have laid down certain directions which have resulted in the awarding of modest but arbitrary sums. There is no logical reason why one sum should be awarded more than another, and it is impossible to say that any figure is wrong, viewing the matter from a purely logical basis. However, the awarding of large sums under this head was found to have practical inconveniences. Compared with the sum awarded in *Benham v. Gambling*[1] the present sum is on the high side, but bearing in mind that the value of money has fallen very much since that case was decided, I do not think that the sum awarded is manifestly excessive.

As regards pain and suffering, the position is different. I think that the fact that the deceased died is immaterial. The sum awarded should, I think, be the same as would have been awarded if the deceased had recovered. Certain decisions of the Court of Appeal seem to have treated the matter as analogous to loss of expectation of life. I think that this is wrong and that to award almost nominal damages is contrary to the terms of the statute. I do not think that the observation of the House of Lords in *Benham v. Gambling*[1] apply to these cases. Here the deceased suffered a substantial amount of pain and suffering. I cannot say that the amount awarded is excessive.

Mathew, C.J., (F.M.) : — I have had the advantage of reading he judgment of the learned President in this appeal with which I agree.

As regards the damages for pain and suffering, they are perhaps on the high side by standards accepted in England where there is a tendency to award purely nominal damages under this head, the reason being that it is not the man who is injured who receives the compensation. The clear intention of the legislature has, in my view, been negatived to a great extent by judicial decision. The injuries that the deceased suffered in this case were shocking, and he must have been in very considerable pain. I do not consider that the award of $2,000 is so high as to require interference by this Court.

Brown, J. : — Although I think that the award of $4,000 for loss of expectation of life is high (we were told that it is the highest figure that has yet been given), I do not think that it is so high that we ought to interfere with it. But from the record it would appear that the learned Judge's reason for awarding $2,000 for pain and suffering is not established by the evidence.

The amount of damages to be awarded was in respect of the pain which the deceased suffered from the time when he was knocked down until the time when he died — and no more. Therefore, in my opinion, it can only be correct to say that the sum awarded should be the same as would have been awarded if the deceased had recovered, if we make the hypothesis that he recovered and was restored to full health and strength at the moment when he died. He suffered pain for three days — and no more. The cause of action which vested in him for pain and suffering while he was alive was limited to that period, and it was in respect of this limited period that the cause of action survived for the benefit of his estate. I understand this to be the correct reason for the reduction of the award under this head from £500 to £22 in *Rose v. Ford*[2] and I would refer to the passage from the Judgment of Lord Roche at the top paragraph of page 379.

In *Rose v. Ford*[2] the deceased survived for 4 days, during which period she was in a state of coma. In *Mills v. Stanway Coaches*[3] the deceased survived for 4 days during which she was unconscious for the greater part of the time. In that case the Court of Appeal reduced the damages from £200 to £50.

In the case which is before us the learned Judge gave as the reason for awarding $2,000 that "the deceased was conscious for nearly three days before his death." If I could assume that this was so I would not think it right to interfere with the award. But having regard to the grievous nature of his injuries I do not think that we can assume that he was allowed to suffer in the General Hospital for three days without steps being taken to alleviate his sufferings. From the record it would appear that no evidence was called upon this point. And as the respondents were claiming damages for the pain which the deceased suffered, it seems to me that the onus was upon them to prove it. In the absence of evidence I do not think we are entitled to infer that he was conscious throughout that period, and I think that in the ordinary course of hospital routine the probability is that he was not. For that reason I would reduce the award under this head from $2,000 to $500.

Appeal dismissed.

HUMES LTD. v. THE COMPTROLLER OF INCOME TAX, SINGAPORE.

[App. Civ. Juris. (Brown, J.) November 12, 1952]

[Singapore — District Court Appeal No. 23 of 1952]

Income Tax Ordinance, 1947, s. 39 — Construction — Whether "person" in s. 39(b) includes a Company —Ss. 38 and 41 explained.

This appeal raises an important question of the proper interpretation of section 39 of the Income Tax Ordinance. Under section 39(a) every company is liable to 30% tax and under section 39(b) every person not resident in the Colony is liable to 20% tax. The appellants rely upon the inclusion of a company in the definition of "person" in section 2 of the Ordinance and claim that section 39(b) includes a company not resident in the Colony.

Held: the definition of "person" in section 2 must be read subject to the introductory and overriding words "unless the subject or context otherwise requires." The context of section 39 is clear and unambigious. It must be read in conjunction with section 38, so that the word "person" in section 39(b) excludes a company.

CIVIL DISTRICT COURT APPEAL.

Dr. C. H. Withers-Payne for the appellants.

C. H. Butterfield (Solicitor-General) for the respondent.

Cur. Adv. Vult.

Brown, J. : — This appeal raises an important question of the proper construction of section 39 of the Income Tax Ordinance, viz. whether the tax payable by a company, which is not resident in the Colony, is at the rate of thirty per cent or twenty per cent on every dollar of its chargeable income.

Many authorities have been cited on both sides with a view to shewing the principles by which the Court should be guided in construing statutory enactments in tax cases. But I do not think that there can be any doubt or difficulty regarding the correct approach to this question. As in every case, it is the duty of the Court to ascertain the intention of the Legislature from the language which it has used. It is not my duty to speculate upon its intention or to insert words which the statute does not contain. If the language used is ambiguous and is capable of two reasonable constructions, it would be my duty to adopt the construction which is favourable to the taxpayer.

Section 39 provides that :—

". . . . . there shall be levied and paid for each year of assessment upon the chargeable income of —

(a) every company tax at the rate of thirty per centum on every dollar of the chargeable income thereof;

(b) every person not resident in the Colony, ... tax at the rate of twenty per centum on every dollar of the chargeable income thereof".

The appellants rely upon the inclusion of a company in the definition of "person" in section 2 of the Ordinance